

## ERIE RAILROAD CO. AND ATLANTIC MUTUAL INSURANCE CO.

FEBRUARY 28, 1956.—Committed to the Committee of the Whole House and  
ordered to be printed

Mr. BOYLE, from the Committee on the Judiciary, submitted the  
following

### R E P O R T

[To accompany H. Res. 402]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 402) for the relief of Erie Railroad Co. and Atlantic Mutual Insurance Co., having considered the same, report favorably thereon without amendment and recommend that the resolution do pass.

This resolution is merely to refer H. R. 5918, a bill for the relief of the Erie Railroad Co. and Atlantic Mutual Insurance Co., to the United States Court of Claims for the findings of fact and report its conclusion to the Congress. Your committee is of the opinion that it is a case that should be referred to the court and, therefore, recommend favorable consideration of the resolution.

[H. R. 5918, 84th Cong., 1st sess.]

A BILL For relief of the Erie Railroad Company and Atlantic Mutual Insurance Company et al.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Erie Railroad Company and Atlantic Mutual Insurance Company et al., the sum of \$138,182.40 with interest. The payment of such sum shall be in full settlement of all claims against the United States for refund of Federal distilled spirits tax paid on fifteen thousand three hundred fifty-three and sixty one-hundredths proof gallons of grain alcohol owned by National Distillers Products Corporation, and lost from tank car GATX51703 as a result of the derailment of such tank car on June 21, 1945, at Burns, New York. The Erie Railroad Company reimbursed National Distillers Products Corporation in the amount of \$147,730.62 for the loss of such grain alcohol (including Federal distilled spirits tax paid thereon) and received from such corporation a subrogation receipt as-

signing, transferring, and subrogating to the Erie Railroad Company and Atlantic Mutual Insurance Company et al., all claims of such corporation against the United States for refund of Federal distilled spirits tax paid on the grain alcohol lost from such tank car: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be fined in any sum not exceeding \$1,000.

AFFIDAVIT OF T. J. TOBIN

Erie Railroad Company v. United States (H. R. 6275, 83d Cong., 1st sess.)

STATE OF OHIO,

County of Cuyahoga, ss:

T. J. Tobin, being duly sworn, deposes and says:

I am a vice president of Erie Railroad Co. with my office in the Midland Building, Cleveland, Ohio.

1. With respect to the memorandum of H. Chapman Rose, Acting Secretary of the Treasury, addressed to the chairman of the Judiciary Committee, dated June 1, 1954, it is very apparent that the Treasury's position is not based on justice and fairness by their recommendation that they are not in favor of an enactment of H. R. 6275 on the theory that an enactment of same would create an undesirable precedent. Any precedent that is adverse to justice and fairness should be legislated otherwise.

2. There is no question in our minds that the United States General Order ODT 18A covering distilled spirits tax is definitely a consumption tax which is proven by the fact that the tax paid to the Government covers spirits or alcohol for "eligible beverage purposes." While on this point the internal revenue tobacco tax stamps affixed to packages of cigarettes are likewise a consumption tax.

The United States Court of Claims on November 6, 1951, No. 48744, *Philip Morris & Co. Ltd., Inc., to use of Great American Insurance Company v. United States*, held that the plaintiff was entitled to receive reimbursement from the Government for the value of all tobacco tax stamps affixed to packages of cigarettes which were totally destroyed by fire arising out of a railroad wreck.

Likewise in United States Federal Court in the case of *Stephano Brothers to use of Great American Insurance Company v. United States*, the plaintiff was awarded judgment under the United States Court of Claims (89 F. Supp. 693) (April 3, 1950). This case also involved the complete destruction of internal revenue tobacco tax stamps affixed to packages of cigarettes which were totally destroyed by fire arising out of a railroad wreck.

It is interesting to note that in both the Philip Morris & Co. Ltd., Inc., and the Stephano Bros. cases against the United States, action was brought under subrogation to the use of Great American Insurance Co., which fact would seem to nullify the justification of the Treasury Department's memorandum, dated June 1, 1954, to the Judiciary Committee wherein they state that section 3113A provides for the refund of distilled spirits taxes on alcohol, in that this section gives the Commissioner the privilege to remit or refund such tax where it can be proven, as in the instant case that the alcohol was totally destroyed due to a railroad wreck and was never consumed, which fact has been verified by the Internal Revenue Department. But there is a loophole in section 3113A which provides that such refund of distilled spirits tax shall not be paid if the claimant for taxes has been indemnified against such loss of tax by a valid claim of insurance.

It has been held time and time again, and very logically so, that the existence of insurance does not justify a third party, as in this instance the United States, from escaping liability. These conditions must have been clearly recognized by the United States Court of Claims where action was brought in the name of Stephano Bros. and also Philip Morris & Co., Ltd., Inc., to the use of Great American Insurance Co. This means that the Great American Insurance Co. in the first instance paid both Stephano Bros. and Philip Morris & Co. Ltd., Inc., under an existing policy of insurance and that the Great American Insurance Co., as in every case involving a third-party liability, brought action against the United States in the name of Stephano Bros. and Philip Morris & Co. Ltd., Inc., under the usual subrogation and assignment which is executed by the claimant running in favor of the insurance company,

In the instant case, Erie Railroad Co. was not indemnified in full under an insurance claim for the reason that they sustain the first \$30,000 of loss under the terms of their insurance.

Even had the Erie Railroad Co. received reimbursement in full from their insurance companies, there is no justification under law or equity why the United States should not refund the consumption tax on the entire carload of alcohol which was destroyed and was not consumed.

To further show the inequity of the ruling of section 3113A, the United States again collected the same tax on the replacement shipment as well as on the destroyed shipment.

3. The Erie Railroad Co. had to pay this claim to the National Distillers Products Corp. under the terms and conditions of the ICB uniform straight bill of lading under which this carload of alcohol moved.

4. In the memorandum of the Treasury Department, dated June 1, 1954, it is specifically mentioned that Congress provided relief for distilled spirits lost in major floods and also Congress, in May 1952, passed a bill through committee authorizing the United States to pay to a claimant a distilled spirits tax where the tax had been paid prior to the loss of the alcohol, and such authorization by Congress was because of the fact that the alcohol lost in this particular case was uninsured at the time it was destroyed.

5. The sequence of events concerning this distilled spirits tax is as follows: The National Distillers Products Corp. paid the distilled spirits tax prior to the movement of tank car GATX 51703 of alcohol, from Peoria, Ill., to Clinton, Mass., and, upon payment of the tax, received from the United States tax collector covering distilled spirits shipments an ODT 18A certificate of compliance which was affixed to the Erie Railroad Co.'s bill of lading and to the railroad tank car GATX 51703. This is identical and analogous to the affixation of the internal revenue tobacco stamps to the individual packages of cigarettes. When the contents of railroad car GATX 51703 were destroyed, Erie Railroad Co., under law and under the terms and conditions of the Interstate Commerce Commission uniform straight bill of lading, had to make payment to the National Distillers Products Corp., not only for the value of the alcohol itself but also for the distilled spirits tax which had been paid prior to the railroad car moving in transit. Erie Railroad Co. then requested National Distillers Products Corp. to file claim for the refund of tax which was accomplished by National Distillers Products Corp. and the claim was disallowed by Deputy Commissioner Stewart Berkshire of the Treasury Department under date of January 16, 1946, on the basis that "there is no provision under law authorizing the refund of internal revenue taxes which have been properly paid on distilled spirits."

Logically, and in justice and fairness, whether the tax was paid at source or was collectible by the Government at destination would not seem to be the proper basis for refusal to refund a consumption tax simply because the tax was paid at source, whereas the Government will refund distilled spirits taxes when the spirits are destroyed in transit and where the tax is collectible at destination.

Likewise, it would seem illogical, unjust, unfair, and very prejudiced law where the United States attempts to adjust its liability simply on the basis that there was insurance covering the destroyed shipment. This is absolutely contrary to all law involving third-party liability.

This carload of alcohol, as in many instances, could have moved in transit in bond with the distilled spirits taxes collectible by the Internal Revenue Department at destination, from the consignee, but many distillers pay the tax at source and include the tax in their invoice to the customer and/or the consignee, which is a business gesture only, in that it gives the customer and/or consignee 10 days or 30 days or possibly 60 days, depending on the terms of the invoice, in which to make payment of the invoice including the tax, which is in preference to having to immediately pay the tax upon receipt of the railroad car.

In the Treasury memorandum of June 1, 1954, page 3, in the second paragraph, Mr. Rose states "the Congress has not at any time manifested an intent that the United States shall be an insurer of alcohol or other distilled spirits on which the tax has been properly paid to the extent that the value thereof is represented by the tax." This is an unreasonable statement as there is no reason under law or in justice why the Government should retain a consumption tax paid at source or paid at destination, where it can be proven, as in the instant case, that the distilled spirits were destroyed in transit completely and were not consumed.

It would seem that the discussed ruling of the Treasury Department is based on fear of establishing a precedent rather than to consider the matter equitably

on the basis that the tax was properly refundable on the admission of evidence that the distilled spirits were destroyed and that a consumption tax on such destroyed alcohol should be refunded whether or not the tax was paid prior to the loss, also whether or not there was any insurance whatsoever involved.

As the United States Court of Claims stated in *Stephano Brothers to use of Great American Insurance Company v. United States* (89 F. Supp. 693 (April 3, 1950)), "the Treasury Department cannot narrow the coverage of the statute but may only provide procedures to prevent the Government from being overreached and claimants from being unreasonably denied relief."

T. J. TOBIN.

Subscribed and sworn to before me this 18th day of June 1954.

[SEAL]

VANSTAN LEE, Notary Public.

My commission expires September 2, 1955.



Policy Number

NPS 2139

Amount of Policy

\$ 25,000.00

# PROOF OF LOSS

Expiration

TO

Cancelled on July 29, 1945

ATLANTIC MUTUAL INSURANCE COMPANY

BY YOUR POLICY OF INSURANCE ABOVE DESCRIBED, YOU INSURED  
ERIE RAILROAD COMPANY and PETER DURYEE, Trustee of the Property of The New  
Jersey and New York Railroad Company and their subsidiary Operated Companies  
according to the terms and conditions contained therein, the below mentioned property against loss from the following causes:

Property Insured Legal liability of the assured whether as common carrier and/or  
carriers and/or warehousemen or otherwise, as defined in policy

Against Loss From Physical loss, damage or expense to shipments of every nature and  
description whatsoever, as defined in policy  
the vicinity of

A loss occurred in the City of Burns, N.Y. on the 21st day of June 19 45, about  
the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M., which upon the best of ~~THEIR~~ our knowledge and belief, was caused as follows:

On the above date an Erie Railroad freight train was derailed in the vicinity  
of Burns, New York, and thirtyfour freight cars were smashed, derailed and  
torn apart. No fire ensued. Claims have been paid in excess of \$130,000 up  
to the present time.

The actual cash value of the property described by aforesaid policy, the actual amount of loss or damage, the total insurance  
thereon at the time of said loss and damage as shown by annexed schedule, and the amount claimed under this policy are as  
follows:

CASH VALUE	WHOLE LOSS	WHOLE INSURANCE	AMOUNT NAMED IN THIS POLICY	AMOUNT CLAIMED UNDER THIS POLICY
	<u>in excess of</u>			
	<u>\$130,000.00</u>	<u>\$100,000.00</u>	<u>\$25,000.00</u>	<u>\$25,000.00</u>

~~WE~~ WE hereby make claim upon the insurers hereunder in the sum of \$ 25,000.00 in full and final

settlement of loss and damage referred to. Except as noted below the property described, belonged, at the time of said

loss to various owners

and no other person or persons had any interest therein; no assignment or transfer, or incumbrance of said property has been  
made and no change in the title, use, or possession of said property has occurred since the issuance of said policy, except  
none

In consideration of the payment to be made hereunder ~~WE~~ WE hereby subrogate to said insurers ~~our~~ our right,  
title and interest in and to the property for which claim is being made hereunder, and agree to immediately notify TOPLIS  
& HARDING, Inc. (for account of the above named Insurers) in case of any recovery of the property for which claim  
is being made hereunder. ~~WE~~ WE also agree to turn over to said TOPLIS & HARDING, Inc., for account of the Insurers,  
any such recovery which may be made, or reimburse said TOPLIS & HARDING, Inc., to the extent of the payment for such  
property which may be recovered.

The said loss or damage was not caused by design or procurement on ~~our~~ our part; nothing has been done by or with ~~our~~ our  
privity or consent, to violate the conditions of the policy, or render it void, no articles are mentioned herein, or in annexed  
schedules but such as were interested in the loss and insured under this policy, and belonged to various owners

at the time of said loss or damage, no property saved has been in any manner concealed,  
and no attempt to deceive the said Insurers as to the extent of said loss, has in any manner been made.

SPECIAL CONDITIONS Policies to pay excess of \$30,000 any one accident

Any other information that may be required will be furnished on call, and considered a part of this proof.

It is expressly understood and agreed that the furnishing of this blank to the assured or the preparing of Proofs by an adjuster, or any agent of  
the insurers named in the policy is not a waiver of any rights of said insurers.

WITNESS hand at Cleveland, Ohio

ERIE RAILROAD COMPANY

this 17th day of June 1946

BY:

George A. B. Schuchman SECRETARY

State of OHIO

Assured swears to citizenship of \_\_\_\_\_

County of CUYAHOGA

Residing at \_\_\_\_\_

Personally appeared before me, the day and date above written George A. B. Schuchman  
signer of the foregoing statements, who made solemn oath to the truth of same, and that no material fact is withheld of which  
said Insurers should be advised.

Charles E. Post, Notary Public  
Cuyahoga County, O.

(SEAL)  
Notary Public

My Commission Expires Sept. 20, 1946

## AFFIDAVIT

William H. Meyn, of 1435 Owego Avenue, Lakewood, Ohio, being of full age and being duly sworn, deposes and says:

That I am the treasurer of Erie Railroad Co. and that in February 1946 I was the assistant to treasurer of said Erie Railroad Co.; that in that capacity I signed a negotiable voucher of Erie Railroad Co. in the sum of \$147,730.62 payable to National Distillers Products Corp., representing full payment of a claim made by that company resulting from loss of a shipment of 15,353.60 gallons of 180 proof grain alcohol out of tank car GATX 51703, which was involved in a derailment at Burns, N. Y., on June 21, 1945, and that the aforementioned settlement voucher was negotiated by the National Distillers Products Corp. and paid by Erie Railroad Co.

W. H. MEYN.

Sworn and subscribed before me this 10th day of September 1953.

VANSTAN LEE, Notary Public.

My commission expires September 2, 1955.

## AFFIDAVIT

Frank V. Kelleher, of 19820 Riverview Avenue, Rocky River, Ohio, being of full age and being duly sworn, deposes and says:

That I am employed by Erie Railroad Co. as assistant freight claim agent; that I have been in the freight claim department since September 1, 1917; that on June 21, 1945, I was in charge of investigation and handling of freight claims arising out of wrecks or derailments of Erie Railroad trains and that on June 21, 1945, there was reported to me a derailment of Erie Railroad train N. E. 74 at Burns, N. Y.; that an investigation of this derailment disclosed that in the said train there was a tank car, GATX 51703, containing grain alcohol which was shipped from Peoria, Ill., to Clinton, Mass., by National Distillers Products Corp., which company was the owner of the alcohol; that as a result of the damage to the tank car GATX 51703, the entire contents were spilled upon the ground thereby resulting in a total loss of the entire contents, which consisted of 15,353.60 gallons of 180 proof grain alcohol; that on July 31, 1945, the National Distillers Products Corp. filed a formal claim against Erie Railroad Co. to cover the said loss, tax and prepaid freight, as follows:

15,353.60 proof gallons, at 59½ cents per proof gallon, f. o. b. Peoria	\$9, 135. 39
Federal internal revenue tax paid, 15,353.60 proof gallons, at \$9 per proof gallon	138, 182. 40
Freight prepaid, Peoria, Ill., to Clinton, Mass.	412. 83
<b>Total</b>	<b>147, 730. 62</b>

Upon verification of the facts in the claim and the right of the National Distillers Products Corp. to payment for the loss, Erie Railroad Co. paid to National Distillers Products Corp. the sum of \$147,730.62 by Erie voucher audit No. 3111, February 1946, which payment included Federal distiller spirits tax paid thereon in the amount of \$138,182.40; that upon payment of the said sum by Erie Railroad Co. to the National Distillers Products Corp., Erie Railroad Co. received a receipt from the said National Distillers Products Corp. and it thereupon became subrogated to all rights and claims of the National Distillers Products Corp. against the United States for refund of Federal distillers spirits tax paid on the grain alcohol lost in the said tank car GATX 51703, amounting to \$138,182.40.

FRANK V. KELLEHER.

Sworn to and subscribed before me this 14th day of August 1953.

VANSTAN LEE, Notary Public.

My commission expires September 2, 1955.

## BRIEF SUMMARY, H. R. 5918

1. National Distillers Products Corp. loaded tank car GATX 51703 at their Peoria, Ill., plant on June 16, 1945, with 8,080.90 wine gallons of grain alcohol (eligible beverage purposes) at 190 proof, equivalent to 15,353.60 proof gallons.

2. Internal Revenue Service tax in the amount of \$138,182.40 was paid by National Distillers Products Corp.

3. The grain alcohol shipped in tank car GATX 51703 amounting to 15,353.60 proof gallons (eligible beverage purposes) was consigned to New England Distillers, Inc., care of Bellows Co., located at Clinton, Mass.

4. Due to a railroad wreck at Burns, N. Y., on June 21, 1945, involving some 36 railroad cars, one of which was tank car GATX 51703, the entire contents of tank car GATX 51703 was destroyed or lost.

5. Subsequently claim was filed by National Distillers Products Corp. with the Erie Railroad Co. in the amount of \$147,730.62, arrived at as follows:

15,353.60 proof gallons, at \$0.595 per proof gallon, f. o. b. Peoria, Ill.	\$9, 135. 39
Federal internal revenue tax paid on 15,353.60 proof gallons, at \$9 each	138, 182. 40
Prepaid freight, Peoria, Ill., to Clinton, Mass.	412. 83
Total	147, 730. 62

6. After proper investigation of the National Distillers Products Corp.'s claim, the Erie Railroad Co. made payment to National Distillers Products Corp. of the sum of \$147,730.62, upon surrender of the original bill of lading and other proper supporting documents.

7. National Distillers Products Corp. filed claim with the Internal Revenue Department (Treasury Department) for refund of the internal revenue tax in the amount of \$138,182.40, but the claim for refund was rejected by the Treasury Department who stated, "There was no provision of law to authorize the refund of internal revenue taxes which have been properly paid on the distilled spirits."

8. The National Distillers Products Corp., upon being paid their claim by the Erie Railroad Co., surrendered to the Erie Railroad Co. the original rail bill of lading, thereby vesting unto the Erie Railroad Co. all right, title, and interest in the shipment of grain alcohol (eligible beverage purposes) which had been destroyed or lost from tank car GATX 51703.

In turn the Erie Railroad Co., upon payment of their loss by the Atlantic Mutual Insurance Co. et al., with the exception of the deductible under the policies amounting to \$30,000, subrogated and assigned over to the Atlantic Mutual Insurance Co. et al. all title, right, and interest in the claim up to the amount paid by the Atlantic Mutual Insurance Co. et al.

Erie Railroad Co.	\$30, 000. 00
Atlantic Mutual Insurance Co. et al.	108, 182. 40
Total	138, 182. 40

#### NOTES

(a) The internal revenue tax on grain alcohol eligible for beverage purposes is a consumption tax and the alcohol lost from tank car GATX 51703 was lost or destroyed and was not consumed.

(b) The United States Court of Claims on November 6, 1951, No. 48744, *Philip Morris & Co. Ltd., Inc., to use of Great American Insurance Company v. United States*, held that the plaintiff was entitled to receive reimbursement from the Government for the value of all tobacco tax stamps affixed to packages of cigarettes which were totally destroyed by fire arising out of a railroad wreck.

(c) Likewise in United States Court of Claims in the case of *Stephano Brothers to use of Great American Insurance Company v. United States*, the plaintiff was awarded judgment under the United States Court of Claims (89 F. Supp. 693) (April 3, 1950). This case also involved the complete destruction of internal revenue tobacco tax stamps affixed to packages of cigarettes which were totally destroyed by fire arising out of a railroad wreck.

The United States Court of Claims in this case, in part stated: "The Treasury Department cannot narrow the coverage of the statute but may only provide procedures to prevent the Government from being overreached and claimants from being unreasonably denied relief."

(d) In the consideration of this bill, it might be noted that section 498 of the Revenue Act of 1951 provided for a refund or credit of the internal revenue tax paid on distilled spirits lost, or rendered unmarketable, by reason of the floods of 1951.

## UNITED STATES (FEDERAL)

STEPHANO BROS., TO USE OF GREAT AMERICAN INS. CO. *v.* UNITED STATES

## SUBROGATION—REDEMPTION—DEFINITION, "WITHDRAWN"

Plaintiff, Stephano Bros., a manufacturer of cigarettes, on January 17, 1946, removed from its factory at Philadelphia for consumption or sale 1,060 cases of Marvel brand cigarettes. Plaintiff had affixed to the packages of cigarettes the appropriate internal revenue stamps, for which it had paid \$37,100. The cases were delivered to the Baltimore & Ohio Railroad Co., consigned to plaintiff at St. Louis. On January 18 the freight car containing the cigarettes was derailed and burned and all the cigarettes were destroyed, except four cases. The railroad paid the plaintiff the amount of its loss in cigarettes and stamps, and the two insurance companies reimbursed the railroad. The stamps on the packages which were not destroyed were redeemed by the Government and plaintiff was paid \$140.56, which it paid over to the railroad. Plaintiff's further claim for redemption of the stamps which had been affixed to the burned packages and had been burned with them was rejected by the Commissioner of Internal Revenue in a letter which stated that neither section 2198 of the Internal Revenue Code nor article 116 (b) nor Treasury Regulations No. 8 authorized the reimbursement sought by the plaintiff. Plaintiff brought suit to the use of the insurance companies for reimbursement for the Federal internal revenue stamps destroyed in the fire.

*Held*, that under the provisions of section 2198 of the Internal Revenue Code, that internal revenue stamps affixed to packages of cigarettes which after removal from factory or customhouse for consumption or sale, the manufacturer or importer withdraws from the market, may, under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, be redeemed, the Treasury Department cannot narrow the coverage of the statute but may only provide procedures to prevent the Government from being overreached and claimants from being unreasonably denied relief. Where the packages of cigarettes, together with the stamps affixed thereto, were destroyed when the freight car in which they were shipped by the manufacturer was derailed and burned, such cigarettes were withdrawn from the market within the provision of section 2198, that internal revenue stamps affixed to packages of cigarettes which, after removal from factory or customhouse for consumption or sale, the manufacturer withdraws from the market, may be redeemed. Judgment for plaintiff in the sum of \$36,959.44.

*Judgment for plaintiff here granted by the United States Court of Claims.*

89 Federal Supplement 693 (April 3, 1950).



## ENDING SPACE

[illegible]

## REPORT OF ALCOHOL GAUGED

Changed for Flintstone  
(Entry or withdrawal)

Industrial Alcohol Bonded Warehouse No. 000

**NATIONAL DISTILLERS' PRODUCTS CORP.**  
(Name of proprietor)

at \_\_\_\_\_  
(City or town and State)

this 20th day of June, 1948 For Payment

[illegible]

<sup>2</sup> To be filled in when packages are reweighed.

## Background:

NATIONAL DISTILLERS PRODUCTS CORP.

By

*(Name and capacity)* \_\_\_\_\_ *Proprietor,*



# APPLICATION FOR DISTILLED SPIRITS STAMPS FOR PACKAGES

June 14, 1945, 19

To COLLECTOR OF INTERNAL REVENUE:

Peoria

Illinois

Application is hereby made for tax stamps for the within-described packages of alcohol. Remittance in the amount of \$281.22-00, is submitted herewith.

Natl Distillers Prod Corps

Proprietor.

By

(Name and capacity in fact)

## COLLECTOR'S CERTIFICATE

Dist. of Illinois

16 June 1945

I HEREBY CERTIFY that tax stamps in the sum of \$ 281.22-40 covering the within-described alcohol has this day been paid to me. Serial numbers of the (tax-paid) stamps issued are entered in the column therefor.

Collector.

## APPLICATION FOR WITHDRAWAL

, 19

To OFFICER IN CHARGE:

Application is hereby made to withdraw the within-described alcohol:

Tax-paid, per tax-paid stamps or certificate of tax-payment presented herewith;

Tax-free for \_\_\_\_\_, pursuant to Withdrawal

Permit No. \_\_\_\_\_

(Purpose)

at \_\_\_\_\_, presented herewith;

For transfer to \_\_\_\_\_

(Bonded warehouse or denaturing plant)

No. \_\_\_\_\_

of \_\_\_\_\_

(Name)

at \_\_\_\_\_

(City or town and State)

, pursuant to

Withdrawal Permit No. \_\_\_\_\_, presented herewith.

NATIONAL DISTILLERS PRODUCTS CORP

By

N. J. Reiger Proprietor.

(Name and capacity in fact)

## OFFICER'S APPROVAL OF WITHDRAWAL

To PROPRIETOR:

Permission is hereby granted for the withdrawal and shipment of the within-described alcohol as specified herein.

\_\_\_\_\_, 19 45  
Officer in Charge.

## RECORD OF RECEIPT AT BONDED WAREHOUSE OR DENATURING PLANT

, 19

I HEREBY CERTIFY that the within-described alcohol was duly received and deposited in \_\_\_\_\_

(Bonded warehouse or denaturing plant)

No. \_\_\_\_\_

, of \_\_\_\_\_

(Name of proprietor)

at \_\_\_\_\_

(City or town and State)

this

day of \_\_\_\_\_

, 19 \_\_\_\_\_, except as follows:

By \_\_\_\_\_

(Name and capacity)

Proprietor.

\* Delete words not applicable.

U. S. GOVERNMENT PRINTING OFFICE 16-20707

10 ERIE RAILROAD CO. AND ATLANTIC MUTUAL INSURANCE CO.

Form 1594  
TREASURY DEPARTMENT  
Internal Revenue Service  
February 1938

C O P Y

APPLICATION FOR COLLECTOR'S CERTIFICATE OF  
TAX-PAYMENT OF DISTILLED SPIRITS  
FOR SHIPMENT IN TANK CARS

June 16, 1945

Collector of Internal Revenue,

Mr. V. Y. Dallman

Application No.

3

(To be filled in by vendor)

Peoria, Illinois

Application is hereby made by National Distillers Products Corporation  
(Name of vendor)

Erie & Crowell Sts. Peoria, Illinois  
(Street and number or rural route of premises) (City, town, or county, and State)

for a Collector's Certificate of Tax-Payment of Distilled Spirits for Shipment in  
Tank Cars, Form 1595, in the amount of \$ 138182.40, to be attached to  
the tank car as evidence of the payment of the internal revenue tax of \$ 9.00

per proof gallon on 15355.6 gallons of Grain Alcohol, per  
(Number) (Kind of spirits)

report of gauge, Form 1440, attached; to be shipped in tank car GATEX  
(Owner)

51703 to New England Distillers Inc.  
(and car number) (Name of vendee)

Clinton, Mass.  
(Street and number) (City or town, and State)

Remittance in the form of CERTIFIED CHECK, in the amount  
(Cash, P.O.M.O., or certified check)

of \$ 138182.40, is tendered herewith. It is requested that the certif-  
icate be sent by Call, or delivered to National  
(Ordinary mail or registered mail)

Distillers Products Corpn.  
(Name)

NATIONAL DISTILLERS PRODUCTS CORP.  
(Vendor)

By

B. S. S. S.

Atty. in fact  
(Capacity)

(For use of Collector)

Certificate issued;

Serial No. 9842

Date June 18, 1945

Amount 138,182.40

W. R. S. S.  
Cashier.

# NICKEL RATE ROAD

Form 1000

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY

Make Checks Payable to  
THE N. Y. C. & ST. L. R. R. CO.

## PREPAID FREIGHT BILL—ORIGINAL FOR CHARGES ON ARTICLES TO BE TRANSPORTED

STOP THIS CAR AT		WEIGHT IN TONS		LENGTH OF CAR		MARKED CAPACITY OF CAR	
		Gross	Tare	Net	Ordered	Furnished	Ordered Furnished
FOR		C. L. TRANSFERRED TO OR L. C. L. LOADING NO.		DATE		WAYBILL No.	
CAR INITIALS AND NUMBER <b>GATX 31703</b>				<b>WA 6 16 45</b>		<b>70316</b> ✓	
TO STATION <b>CLINTON MASS</b>		STATE		FROM STATION <b>CLINTON CT</b>		STATE	
RECONSIGNED TO STATION		STATE		FULL NAME OF SHIPPER and, for C. O. D. Shipments, the Street and Post Office Address, and Invoice Number if Available. <b>NATL DIST PRODS CORP 1201</b>			
Authority ROUTE (Show each Junction and Carrier in Route Order to Destination of Waybill) <b>LIMA ERIE MAYBRK NH</b>		Show "A" if Agent's Routing or "B" if Shipper's Routing		ORIGIN AND DATE, ORIGINAL CAR, TRANSFER FREIGHT BILL AND PREVIOUS WAYBILL REFERENCE AND ROUTING WHEN REBILLED.			
CONSIGNEE AND ADDRESS <b>NEW ENGLAND DIST IND A/C BELLOW CO</b>		<div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>THESE CHARGES BE PAID ON CHECK MAILED BEFORE MIDNIGHT JUN 20 1945</b> </div>					
FINAL DESTINATION AND ADDITIONAL ROUTING							
INSTRUCTIONS (Regarding Icing, Ventilation, Heating, Milling, Weighing, Etc. If Icing, Specify to whom Icing Should be Charged)							
<b>ODT 18A SEC 500 72 D</b>							
On L. C. L. Traffic Transfer Stamps to be shown in this space.		Indicate by Symbol in Column provided how weights were obtained for L. C. L. Shipments only. R—Railroad Scale. S—Shipper's Tare Weight. E—Estimated—Weight and Correct. T—Tare Classification or Minimum.					
DESCRIPTION OF ARTICLES AND MARKS		★	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
<b>TAX RAID T/C E B P ALCOHOL</b>			<b>54905</b>	<b>73</b>	<b>40081</b>		<b>40081</b>
<b>190 PF ALCO REG DANGEROUS PLAC CAPY 8171 SHELL 254 DOME LGS TEMP 78 WT PER GAL AT 278 6 71960 WINE GALS A T 78 8171 GALS</b>						<b>TAX</b>	<b>1202</b>
<b>SEALS AIR 415174</b>							<b>41283</b>

**PAID**

JUN 20 1945


**A. N. ROBINSON**  
AGENT

2

RECEIVED

PAYMENT

The original prepaid freight bills must be surrendered for overcharges to be refunded and must accompany claims for overcharge, loss or damage.

 <b>ERIE RAILROAD COMPANY</b>		ASSET NO. 3111 NO. FEB 1946
		DEPT. NO. 582654 AUDITED
PAY TO THE ORDER OF National Distillers Products Corp. 120 Broadway New York 5, N.Y.		APPROVED FOR PAYMENT MAR 11 1946
TREASURER MAR 11 1946		CONTROLLER MAR 4 - 1946
One Hundred Forty Seven Thousand, Seven Hundred Thirty and 62/100 -- 147,730.62 DOLLARS		ASSISTANT TO TREASURER
PAYABLE AT FEDERAL RESERVE BANK OF NEW YORK PAYABLE IN NEW YORK CITY THROUGH NORTHERN NEW JERSEY CLEARING HOUSE		

ENDORSE HERE PAY TO THE ORDER OF ATLANTIC MUTUAL BANK	9	FEDERAL RESERVE BANK OF NEW YORK RECEIVED MAR 11 1946 NEW YORK CLEARING HOUSE
	174	174



TREASURY DEPARTMENT,  
Washington 25, June 1, 1954.

HON. CHAUNCEY W. REED,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: Further reference is made to your letter dated February 26, 1954, requesting a report on H. R. 6275 (83d Cong., 1st sess.) entitled "A bill for the relief of the Erie Railroad Co." If enacted, the proposed legislation would authorize and direct the Secretary of the Treasury to pay the sum of \$138,182.40 in full settlement of all claims against the United States for refund of distilled spirits tax paid on 15,353.61 proof gallons of grain alcohol owned by National Distillers Products Corp., and lost from tank car GATX 51703 as a result of the derailment of such tank car on June 21, 1945, at Burns, N. Y.

The available records of the Internal Revenue Service disclose the following information regarding this matter: The records of the national office of the Alcohol and Tobacco Tax Division show that National Distillers Products Corp. filed a claim (Claim No. DS-287519) on December 20, 1945, for refund of \$138,182.40, representing the tax paid on 15,353.61 gallons of distilled spirits lost from tank car GATX 51703 while in transit from Peoria, Ill., to New England Distilleries, Inc., Clinton, Mass.

The evidence submitted in support of the claim shows that the tank car was derailed at Burns, N. Y., and that the small quantity of spirits which remained therein was spilled, resulting in a total loss of the distilled spirits. The tax on the 15,353.61 proof gallons of the distilled spirits was properly paid by the National Distillers Products Corp. at the time of the withdrawal of the alcohol from industrial alcohol bonded warehouse No. 202 in Peoria, Ill.

There is no evidence submitted by the claimant which would bring the claim under the provisions of section 3770 (a), Internal Revenue Code, relating to taxes erroneously or illegally assessed or collected, and the bill for the relief of Erie Railroad Co. makes no allegations to this effect. The tax attached to the alcohol as soon as it came into existence as such (sec. 3112, Internal Revenue Code) and was paid upon the withdrawal of bond at the then prevailing rate of \$9 per proof gallon in accordance with provisions of sections 2800 (a) (1) and 1650, Internal Revenue Code. The tax was properly paid and collected. The refund claim filed by National Distillers Products Corp. was disallowed on January 16, 1946, on the ground that there is no provision of law for refunding the tax where the alcohol is lost after the tax has been paid. The records do not show any judicial appeal from the rejection of this claim.

The section which specifically deals with the loss of alcohol is section 3113 (a). This section provides as follows:

"Whenever any alcohol is lost by evaporation or other shrinkage, leakage, casualty, or unavoidable cause during distillation, redistillation, denaturation, withdrawal, piping, shipment, warehousing, storage, packing, transfer, or recovery, of any such alcohol the Commissioner may remit or refund any tax incurred under existing law upon such alcohol, provided he is satisfied that the alcohol has not been diverted to any illegal use: *Provided, also,* That such allowance shall not be granted if the person claiming same is indemnified against such loss by a valid claim of insurance."

It is the view of the Internal Revenue Service that the legislative intention of this section was to provide relief only where the tax had not been paid at the time the loss occurred, since all of the enumerated circumstances therein are clearly applicable to alcohol on which the tax has not been paid.

The legislative history of section 3113 and the background of relief statutes which existed when the statute was originally enacted do not indicate any intention on the part of Congress to abandon its established policy of granting relief from the tax on distilled spirits (including alcohol) only where the tax had not been paid at the time the loss occurred. Section 3113 was derived from section 14 of title III of the National Prohibition Act (41 Stat. 305). The several statutes providing for the allowance of losses of distilled spirits or alcohol by leakage or evaporation or casualty, which were in effect when the National Prohibition Act was enacted, related exclusively to losses of distilled spirits or alcohol on which the tax had not been paid. See section 3221, Revised Statutes, as amended by the act of March 1, 1879 (20 Stat. 327); section 6, act of March 1, 1879, as amended by the act of May 28, 1880 (21 Stat. 145); section 3, act of March 2, 1907 (34 Stat. 1250); section 1, act of December 20, 1879 (21 Stat. 59); section 603, act of February 24, 1919 (40 Stat. 1057); and section 50, act of August 27, 1897 (28 Stat. 509), as amended by the act of March 3, 1899 (30 Stat. 1349). The provisions of section 3113 in respect of refund, like the provisions of section 3221, Revised Statutes, are intended to apply where the tax is collected after the loss of the alcohol.



The remedial statutes in effect when section 3113, IRC, was originally enacted did not authorize refund of the tax on distilled spirits in any case where the spirits were destroyed after the tax was paid, even where the spirits were destroyed by accidental fire while remaining in the bonded warehouse and before the taxpaid stamps were affixed to the package. Cf. *Julius Kessler & Co. v. United States* (61 Ct. Cl. 723, cert. den. 273 U. S. 700).

It has been held in *Stitzel-Weller Distillery, Inc. v. United States* (82 F. Supp. 50), that the tax paid on distilled spirits which were lost after taxpayment but before removal from the bonded warehouse was refundable under section 2901 (b), as amended by the act of April 8, 1942. The Congress quickly showed, however, that the court's construction of the law was contrary to the legislative intent, by including in the amendatory act of February 21, 1950, a provision that nothing contained in section 2901 shall be construed to authorize refund of the tax where the loss occurred after the tax was paid.

The general rule is that the tax on distilled spirits must under the law be paid by the distiller, even where the spirits are destroyed before the tax is paid, unless he can put his finger upon some clause in the remedial statutes which relieves him from its payment (*Greenbrier Distillery Co. v. Johnson*, 88 Fed. 638; *St. Paul-Mercury Indemnity Co. v. United States*, 156 F. (2d) 425; *Thompson v. United States*, 142 U. S. 471; *Crystal Spring Distillery Co. v. Cox*, 49 Fed. 556; *Clay v. Swope*, 38 Fed. 396). The Congress has not at any time manifested an intention that the United States shall be an insurer of alcohol or other distilled spirits on which the tax has been properly paid to the extent that the value thereof is represented by the tax. During the more than 30 years that section 3113, IRC, and the statute from which it was derived, have been a part of the internal revenue laws the Internal Revenue Service has consistently held that there is no provision of law which authorized refund of the tax on distilled spirits or alcohol which are lost or destroyed after the tax has been paid.

There is presently pending in the United States Court of Claims a suit against the United States (*Aetna Insurance Company et al. v. U. S.*, Court of Claims, Case No. 281-52) for refund of tax paid on alcohol lost from a tank car during shipment. The facts in the Aetna case are substantially similar to the facts upon which the Erie Railroad Co. seeks legislative relief. No decision has yet been rendered in the Aetna case.

Relief has been given by the Congress for the tax paid on distilled spirits lost in certain major floods. However, the flood relief bills are not considered comparable to the present bill, since general relief was granted to the entire class of persons suffering such losses.

Numerous cases have arisen where alcohol or other distilled spirits have been accidentally destroyed after tax payment and where claims for refund have been filed with the Internal Revenue Service. Such claims have been uniformly rejected for the reason that existing law, applicable alike to all claimants in such cases, authorizes no refund.

The Erie Railroad Co. reimbursed the National Distillers Products Corp. for the value of the alcohol which was lost. Part of the value of the alcohol consisted of the internal revenue tax which had been paid thereon. The files of the national office of the Alcohol and Tobacco Tax Division do not indicate whether or not the Erie Railroad Co. was indemnified by insurance for the loss upon which they made payment to the National Distillers Products Corp.

The records of the national office of the Alcohol and Tobacco Tax Division contain no record of the filing of any claim for refund of the \$138,182.40 by the Erie Railroad Co.

The granting of relief in this case would set a precedent which might be extended to the refunding of various types of Federal excise taxes when the articles upon which such taxes had been paid were lost or destroyed subsequent to the payment of the tax.

The Department is of the opinion that the enactment of this legislation would constitute a discrimination against other taxpayers similarly situated and would create an undesirable precedent by encouraging other taxpayers to seek relief in this manner.

In view of the above, the Treasury Department is not in favor of enactment of H. R. 6275.

The Director, Bureau of the Budget, has advised the Treasury Department that there is no objection to the presentation of this report.

Very truly yours,

H. CHAPMAN ROSE,  
Acting Secretary of the Treasury.

